In the High Court of Punjab and Haryana at Chandigarh.

Civil Revision No.4786 of 2006.

Date of decision:12.9.2006.

Bimal Kaur

...Petitioners.

Versus

Joginder Kaur.

...Respondent.

...

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

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Present: Mr.Ashwani Chopra, Senior Advocate with Mr.Ashish Chopra Advocate for the petitioners.

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Judgment.

S.N.Aggarwal, J.

The petitioners filed Civil Suit against Joginder Kaur for a declaration to the effect that they were owners in joint possession to the extent of 2/3 share in the property bearing No.1541, Urban Estate, Phase II, Jalandhar left by Jagir Singh. Petitioner No.1 claimed to be the widow of said Jagir Singh and petitioner No.2 Gurkamal Singh claimed to be the son of said Jagir Singh. Joginder Kaur was also widow of said Jagir Singh. Joginder Kaur respondent in the written statement denied if Bimal Kaur petitioner was the legally wedded wife

of Jagir Singh or Gurkamal Singh was the son of said Jagir Singh. In the replication filed by the petitioners, however, a plea was taken by them that Gurkamal Singh petitioner was born out of the wedlock of Bimal Kaur with Jagir Singh and from the loins of Jagir Singh.

Issues were framed.

The petitioners failed to produce any witness in the Court and their evidence was closed by the Court under Order 17 Rule 3 CPC and the suit was dismissed. The first appeal filed by the petitioners was also dismissed. The petitioners then filed Regular Second Appeal No.2413 of 2005 and vide order dated 18.5.2006 this Court remanded the matter to the Lower Court to decide the suit on merits after giving reasonable opportunity to the parties to lead evidence.

The file was coming up for evidence of the petitioners when they filed an application under Order 6 Rule 17 read with Section 151 CPC for amendment of the plaint. Through this amendment, the petitioners wanted to amend the plaint so as to plead that Gurkamal Singh petitioner was the adopted son of Bimal Kaur and her husband Jagir Singh. This application was dismissed by the learned trial Court vide order dated 31.8.2006.

Hence the present petition.

The submission of the learned counsel for the petitioners was that the law of amendment is very liberal. Amendment should be generally allowed and it can be allowed at any time in the interest of

justice. Reliance was placed on the judgment of the Hon'ble Supreme Court reported as **Baldev Singh and others etc. Vs. Manohar Singh and Another etc.**, 2006(3) Civil Court Cases 573 (SC) in which it was held by the Hon'ble Supreme Court that the Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. Reliance was also placed on another judgment of the Hon'ble Supreme Court reported as **Rajesh Kumar Aggarwal & Others Vs. K.K.Modi and others,** 2006(3) Civil Court Cases 57 to the same effect.

It was submitted that the petitioners had pleaded that Gurkamal Singh petitioner was the son of Jagir Singh and by amendment in the plaint, they only want to add the word **adopted** before the word son so as to read that Gurkamal Singh petitioner was the adopted son of Jagir Singh. By the proposed amendment, they want to clarify that he was the adopted son of Bimal Kaur and Jagir Singh. Hence, it was prayed that this amendment be allowed in order to avoid the multiplicity of litigation while the opposite party can be compensated by payment of costs.

No doubt,it was admitted that in the replication, a plea was taken by the petitioners that said Gurkamal Singh was born from the loins of Jagir Singh but it was submitted that replication is not a part of pleadings. Therefore, not much should be read in the replication.

These submissions have been considered.

It is a clear case of mis-use of process of law. The

petitioners instituted Civil Suit in 2004 claiming a share in the property of Jagir Singh on the plea that Bimal Kaur was the widow of said Jagir Singh and Gurkamal Singh was the son of said Jagir Singh. These facts were specifically denied by the respondent by filing written statement filed in 2004 itself and a specific stand was taken that neither Bimal Kaur was the wife of Jagir Singh nor Gurkamal Singh was the son of Jagir Singh. To rebut these allegations, the petitioners had taken a specific stand that Gurkamal Singh was born from the loins of Jagir Singh. Replication may not be a part of pleadings but it was filed by the petitioners. A specific plea was taken that Gurkamal Singh was born to the petitioner from the loins of Jagir Singh. This replication was also filed in the early stages of the Civil Suit and now in 2006 to take a plea which is totally contradictory to the plea already taken by the petitioners in the replication amounts to total change of version. After all, the parties must stand some where. They should not be permitted to shift their stands from time to time merely because the law of amendment is liberal. Petitioner Bimal Kaur was in the full knowledge how Gurkamal Singh came into the family of Jagir Singh, whether by birth or by adoption. She took a plea that he had come by birth. This was a fact on which Bimal Kaur could not say that she had no knowledge earlier or she derived the knowledge later on.

The law of amendment may be liberal but amendment is again subject to certain conditions that by the proposed amendment, prejudice should not be caused to the other side nor a party can be

permitted to take a contradictory stand. The learned trial Court has, therefore, rightly dismissed the application for amendment by which the petitioners wanted to take a plea which is totally opposite to the stand already taken by them. It is a total mis-use of process of law.

Therefore, this petition is dismissed with costs of Rs.5,000/-.

September 12,2006. (S. N. Aggarwal)
Jaggi Judge